APPEAL NO. 92117
FILED MAY 7, 1992

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 through 11.10 (Vernon Supp. 1992). On February 27, 1992, a contested case hearing was held in _____, Texas, with (hearing officer) presiding. He found that claimant, respondent herein, injured his knee in a slip and fall accident at the workplace and ordered that benefits be paid. Appellant attacks findings that injury occurred on (date of injury), and that a prior injury was not the sole cause of injury.

DECISION

Finding that the decision is not so against the great weight and preponderance of the evidence as to be manifestly unjust, we affirm.

Respondent had worked for (employer) since 1978 but had some periods of being laid off, particularly beginning in 1986. On (date of injury), he was working in a large yard (over 20 acres) as one of several employees who cleaned and serviced equipment preparatory to its being offered for rental again. He worked the night shift. He admitted that he did not like being on the night shift. There was also testimony from MH, who had been in charge of the night shift on (date of injury), that respondent did not like having to work in the yard and would have preferred to work in the office. At the time respondent stated that he fell, he said he was cleaning equipment with a high pressure hose and had used diesel fuel in addition to soap to remove grease. MH confirmed that cleaning equipment in this manner was part of respondent's duty and acknowledged that the concrete slab on which this was done could become slippery from the process. He did not recall respondent performing such tasks that night but thought he had been painting. MH did not see the fall and said that respondent did not report it to him. He also stated that on May 1, 1991, he (MH) was fired and no longer works for that employer. He agreed that he did not think respondent respected him because he was younger (there appeared to be some tension between respondent and MH).

MH was aware that in the fall of 1990 respondent had been severely injured in a motor vehicle accident. At the time of the alleged injury on (date of injury), MH said respondent had been returned to full duty with no formal restrictions. The prior accident occurred on September 7, 1990, and also involved HM, manager of the shop, but respondent was driving. Respondent in that accident said he broke five left ribs, his sternum, the top of the left tibia, his chin, nose, and some facial bones; he also injured his left lung. Prior to (date of injury), he had arthroscopic surgery on his "knee." An MRI had indicated before such surgery that the anterior cruciate ligament needed repair. During November and December 1990, he was said to be improving from that surgery and while some problems with the leg and knee continued, no mention was made of a possible problem with his posterior cruciate ligament until an entry on February 8, the first time Dr. G saw respondent after the alleged injury on February 1. (We note that only one page of one

doctor's progress notes was offered in evidence (from a note at the bottom of that page showing that surgery to the posterior cruciate ligament of the left knee was later done in March 1991, we infer that the knee discussed earlier on the page is also the left knee) and no statement from the doctor was in the record.)

Other witnesses who testified or gave statements had little to add. WW was the personnel manager who said he first heard of the alleged injury in July 1991, when the Texas Workers' Compensation Commission sent word that a claim had been made. In his statement, also in evidence, he said that he talked to respondent after hearing about the claim and respondent told him he had slipped and fallen and in regard to the claim, "said he just didn't know what else to do." OC was a dispatcher supervisor at the time of the alleged injury. He indicated that respondent's earlier massive injuries were not related to work, that respondent did "regular" work on February 1, and that on approximately February 7, 1991, respondent left before his shift was over and did not return. He subsequently was fired.

During the hearing, the hearing officer discussed whether or not there was an issue as to notice to the employer in this case. No notice issue was raised, and none is raised on appeal. Evidence as to lack of notice was offered to substantiate the position that no injury occurred on (date of injury).

Evidence indicating that an injury occurred on (date of injury), came only from respondent. No one saw it, heard it, or noticed any effect of it on the respondent thereafter. Others who were employees at the time did agree that the conditions of respondent's work could have been consistent with a slip and fall accident. No doctor's comment in a medical record or otherwise indicates any report of a slip and fall. No one with whom respondent worked said he told of or reported a slip and fall. The one page of medical records available does discuss a problem with respondent's knee after February 1 that had not been mentioned in entries on four dates prior to that time. This evidence could have substantiated a determination that respondent was not injured on
(date of injury), but that is not the standard by which the appeals panel reviews cases. The appeals panel follows the criterion set forth in In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1952), in judging whether the decision is so against the great weight and preponderance of the evidence as to be manifestly unjust.

The trier of fact should carefully weigh the evidence of an interested witness even when not contradicted. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). Nevertheless, the testimony of the claimant alone may be sufficient to establish causation. Page v. TEIA, 544 S.W.2d 452 (Tex. Civ. App.-Dallas 1976), affirmed 553 S.W.2d 98 (Tex. 1977). The trier of fact may draw reasonable inferences and deductions from the evidence. Harrison v. Harrison, 597 S.W.2d 477 (Tex. App.-Tyler 1980, writ ref'd n.r.e.). While it would be reasonable to draw different inferences and conclusions, that is not a basis for setting aside the hearing officer's decision. Garza v. Commercial Ins. Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is the sole judge of weight and credibility of evidence. Article

8308-6.34(e) of the 1989 Act.

The evidence and inferences that may be drawn sufficiently support Finding of Fact No. 6 (respondent slipped and fell injuring himself on (date of injury), while on the job) and Finding of Fact No. 9 (respondent's 1990 accident was not the sole cause of injury). Conclusions of Law Nos. 3 and 4 follow these fact findings and are themselves sufficiently supported. Respondent's evidence in support of these findings was not "so uncertain, inconsistent, improbable, or unbelievable that, although constituting some evidence of probative force when considered in its most favorable light in support of the finding" that it would be clearly unjust to uphold the decision. Gilbert v. Canter, 500 S.W.2d 557 (Tex. Civ. App.-Houston [14th Dist.] 1973, writ ref'd n.r.e.). We affirm.

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Joe Sebesta
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.
Chief Appeals Judge

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Philip F. O'Neill
Appeals Judge